edpb
European Data Protection Board

EDPB Documents

EDPB Guidance on its Plenary Minutes

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The European Data Protection Board

Having regard to Article 68 and Article 69 of the Regulation 2016/679/EU of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, (hereinafter "GDPR"),

Having regard to the EEA Agreement and in particular to Annex XI and Protocol 37 thereof, as amended by the Decision of the EEA joint Committee No 154/2018 of 6 July 2018,

Having regard to Article 3, Article 21 and Article 22 of its Rules of Procedure as amended on 29 January 2020,

HAS ADOPTED THE FOLLOWING DOCUMENT

EDPB GUIDANCE ON ITS PLENARY MINUTES

1 PURPOSE AND SCOPE

1. This document aims to guide the EDPB secretariat in drafting plenary minutes in the perspective of their publication. The purpose of the guide is to describe which elements need to be recorded (2) but also to analyse the impact of proactive publication of the minutes, and the possible need to redact some parts (3). The document also addresses the impact of a decision by the EDPB to consider the content of a discussion as being confidential (4).

2 ELEMENTS TO RECORD IN THE MINUTES

2. This section has been divided to cover the different categories of topics discussed during plenary meetings: general discussions, conclusions and informal votes (2.1), reports/updates by SAs or subgroups (2.2), formal votes (2.3) and tasks and deadlines (2.4).
3. Article 21 (2) and (4) of the EDPB Rules of Procedure ("RoP") provides the framework for the drafting guidance, which reads as follows:
4. "the draft minutes shall include a summary of the discussions, a record of the conclusions reached, the decisions adopted, and as the case may be the numerical result of vote(s). It shall also include the list of documents submitted and their status. The positions of the supervisory authorities of the EFTA EEA States shall be recorded separately. The conclusions reached and the follow-up actions to be undertaken shall be summarized by the Chair at the end of discussions on each agenda point. A to-do-list shall be drafted by the secretariat and sent to the members, the expert subgroups and rapporteurs after approval of the Chair no later than one week after the meeting."

2.1 General discussions, conclusions and informal votes

5. General discussions will not be recorded in detail, as according to Article 21 (2) RoP, the minutes should only contain a summary of the discussion. If the members discuss a topic without putting it to

a formal vote, typically several options are discussed but no definitive conclusion is reached. The main points discussed and the follow up actions(e.g. topic will be further discussed in next plenary or topic will be referred to subgroup) should be stated in the minutes. However, individual contributions should not be attributed to any specific SAs or speakers. Where relevant for future work, the results of an informal vote should be recorded. A summary explanation of the position of the members who voted against or abstained should be included in the minutes with the identification of the SA if it is explicitly requested by the SA in question. In such cases, the requesting SA should reason why its individual position should be recorded. Finally, if the plenary reaches a conclusion that would be useful for the follow up activities, it should be recorded pursuant to Article 21 (2) RoP.

6. Example:

   2.6 Exchange of SA's experiences regarding the recent reports relating to XX Company

7. The members of the EDPB recognized the importance of a good exchange of information in general and in particular in the matter. After discussions, members of the EDPB agreed to have an address by the Commissioner for Data Protection of XXX at the next plenary meeting and a dedicated meeting of the Social Media ESG and the Enforcement ESG

2.2 Reports/updates by SAs or Subgroups

8. The SAs making an update or giving a report should be named in the minutes. However, individuals should not be named, unless it relates to publicly available information or to a public figure and the information is not private. As with general discussions, the information recorded should be kept brief. In most cases, it should be sufficient to state the topic for which a report is provided or an update is given and the information that the topic was discussed by the Board. In general, the individual delegations which participate in the discussions should not be named. In exceptional circumstances, the SAs which contributed to the discussion and the content of the discussion may be recorded. Such information should only be included in the minutes if it is explicitly requested by the SA in question. The SA should reason why it is exceptionally important that the information is recorded in this case. Updates from SAs on ongoing investigations frequently contain names of companies. In general, the names will be recorded. More information on possible exceptions to this general rule can be found in section 3 of this document.

2.3 Formal Votes

9. If a topic is put to a vote, the following information should be recorded: The topic which is the subject of the vote and the result of the vote. The number of votes in favour and against the motion as well as abstentions should be recorded. Individual votes should not be named by default. In accordance to Article 21 (2) of the RoP, the positions of the supervisory authorities of the EFTA EEA States shall be recorded separately. A summary explanation of the position of members who voted against or abstained should be included in the minutes with the identification of the SA if it is explicitly requested by the SA in question.

10. This practice will be in line with the EDPB decision made during its 7th Plenary meeting: "***The EDPB members agreed that a summary explanation of the position of members who voted against or abstained should be included in the minutes with the identification of the SA if it is explicitly requested by the SA in question***".

11. Example:

   3.5.2. Translation of joint opinions

   Adopted

The EPDPB Secretariat presented the motion, that joint opinions should be translated in all EU languages.[1]

Results of the vote: adopted

X in favour; Y against; abstentions: Z

X EEA EFTA SAs in favour; Y EEA EFTA SAs against; Z EEA EFTA SAs absenting

2.4 Tasks and deadlines

12. Only a brief description of the task and the subgroup or SA which the task has been mandated to should be mentioned in the minutes. Specific to-dos and deadlines should only be recorded in the to-dos document. Discussions relating to possible changes of working methods of the Board should also be recorded in the to-dos:
13. Example:

After discussions, members of the EDPB agreed to have:

• 1h address by the Commissioner for Data Protection of XXX at the next plenary meeting (April);

• a dedicated meeting on the 17 April 2019 of the Social Media ESG and the Enforcement ESG. The chairing of this meeting will be decided together with the Social Media ESG and the Enforcement ESG.

3 POSSIBLE NEED TO REDACT INFORMATION RECORDED IN THE MINUTES BEFORE PUBLICATION

14. Despite the commitment of the EDPB to offer the greatest transparency about its activities, it might be the case that some information will need to be recorded in the minutes but cannot be made available to the general public, as it falls within one or more exceptions of Article 4 of Regulation 1049/2001.
15. For instance, the EDPB may discuss ongoing investigations relating to particular companies. This kind of information may be redacted, if an exception under Regulation 1049/2001 would justify a rejection of an access request (For example, under Article 4(1) (b) second indent of Regulation 1049/2001, the protection of commercial interests may justify the denial of access to documents, unless there is an overriding public interest in disclosure). Other items could be subject to a redaction in case, for example, the disclosure of the information would seriously undermine the decision-making process of the EDPB and there is no overriding public interest in such disclosure (Article 4 (3) Regulation 1049/2001).
16. References to internal documents may be redacted if it is duly justifiable under Regulation 1049/2001. The EDPB Secretariat will carefully provide legal assistance to the members regarding their decision to not publish documents.

1 See minutes of 7th Plenary, 1.1.

17. In practice, when sharing the draft minutes with the EDPB members for comments and approval prior to the next plenary meeting, the EDPB Secretariat will highlight the elements which, according to its legal analysis, should be redacted when publishing the minutes.
18. When publishing the redacted minutes, the following text will be inserted at the beginning of the minutes:
19. “Some points have been redacted from these minutes as their publication would undermine the protection of one or more of the following legitimate interests, in particular: the public interest as regards international relations; the privacy and integrity of the individual regarding the protection of personal data in accordance with Regulation 2018/1725; the commercial interests of a natural or legal person; ongoing or closed investigations; the decision-making process of the EDPB, in relation to matters upon which a decision has not yet been taken and/or the decision-making process of the EDPB, in relation to matters upon which a decision has been taken.”
20. The EDPB Secretariat will not be bound by this analysis with regard to future access requests as any request should be evaluated at the time it is received and information redacted at one moment could be disclosed later if the exemptions used are no longer relevant.

4 CONFIDENTIALITY

21. In accordance with Article 76 (1) GDPR and Article 33 (1) RoP discussions shall only be declared to be confidential if they concern a specific individual, the consistency mechanism (i.e. Article 64 GDPR procedures) or if the Board decides that the discussions on a specific topic shall remain confidential, for instance when the discussions concern international relations (i.e. adequacy decisions) and/or where the absence of confidentiality would seriously undermine the institutions’ decision-making process, unless there is an overriding public interest in disclosure (i.e. updates by national SAs on current investigations, discussions of new working methods).
22. The consequence is that the members cannot share (i.e. via social media) the content of the discussions relating to those points. However, the decisions made relating to those points are recorded in the minutes and subject to access to documents requests and the documents adopted are generally published.
23. A declaration of confidentiality should only be made where the content of the discussion relates to a specific topic listed in Article 33 of the RoP. In such an exceptional case, the Chair should indicate those agenda items when the draft agenda is circulated and provide reference to the relevant point under Article 33 (1) RoP. If necessary, a decision by the Board should be sought.
24. In future, the reasons for the declaration of confidentiality should be briefly stated in the minutes (at least the exact reference to the relevant subsection of Article 33 (1) RoP should be cited).
25. Furthermore, the list of topics that will be subject to confidentiality will be listed at the beginning of the minutes and will contain a generic footnote clarifying that this notion of “confidentiality” is not to be understood as classified information but in line with art 76 (1) GDPR . The practical consequence of the application of Art 76 (1) GDPR is that the members and observers are under the legal duty to not reveal to the public elements of the discussions that are not otherwise published, either in the minutes or the adopted documents.

Adopted